

1984 S.C. Op. Atty. Gen. 136 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-54, 1984 WL 159861

Office of the Attorney General

State of South Carolina

Opinion No. 84-54

May 10, 1984

*1 Jack W. Newton
Chairman
South Carolina Educational Television Commission
Post Office Box 2507
Spartanburg, South Carolina 29304

Dear Mr. Newton:

During our telephone conversation on May 2, 1984, you asked several questions about the conduct of meetings of the South Carolina Educational Television Commission, in regard to a quorum of members necessary for the conduct of business by the Commission. We will discuss each question separately, as follows:

1. May a meeting of the Commission be conducted without a quorum, with ratification of any action taken at such meeting occurring when the absentee members receive their copies of the minutes and assent thereto to any action taken?

A quorum of a public body is 'the number of members entitled to vote who must be present in order that business can be legally transacted.' Robert's Rules of Order Newly Revised, § 39, page 293 (emphasis added). The membership of the Commission totals thirteen members;¹ you have advised that seven members constitute a quorum.

The general rule is that, absent statutory provisions to the contrary, any action taken by less than a quorum of a board or commission is void. See 73 C.J.S. Public Administrative Law and Procedure § 20; Petition of Kinscherff, 89 N.M. 669, 556 P.2d 355, cert. den. sub nom. Sandoval County Valuation Protests Bd. v. Kinscherff, 90 N.M. 8, 558 P.2d 620 (1976). This rule is in accord with Robert's Rules of Order Newly Revised, which states, '[i]n the absence of a quorum, any business transacted . . . is null and void. In such a case, it is the business that is illegal, however, not the meeting . . . ' Id., § 39 at page 295.²

The enabling legislation of the Commission, Section 59-7-10 et seq., Code of Laws of South Carolina (1976), contains no provision for the conduct of business absent a quorum or the validity of action taken absent a quorum. Moreover, there is no provision permitting an absent member's assent to ratification of invalid action taken by the Commission, in an effort to reach a quorum.

Therefore, we would advise that a meeting of the Commission, conducted without a quorum, would not be illegal, but any action taken at the meeting, absent a quorum, would be void. Because Commission members must be physically present to constitute a quorum and there is no statutory authority to do otherwise, the lack of a quorum could not be cured by absent members' subsequent ratification of a void action.

2. In determining the quorum, must ex officio members of the Commission be counted?

Prior Opinions of the Attorney General have concluded that an ex officio member of a board or commission is a member of that board or commission for all purposes, including but not limited to voting and counting in the determining of a quorum of the board or commission. See Ops. Atty. Gen., dated December 22, 1981 and March 4, 1976. In Louisville & Jefferson County Planning & Zoning Commission v. Ogden, 210 S.W.2d 771 (Ky.Ct.App. 1948), the court stated that 'ex-officio members of a

public body are members for all purposes and must be counted in determining the presence of a quorum.' 210 S.W.2d at 774. See also 73 C.J.S. Public Administrative Law and Procedure § 20. [Section 59–7–10 et seq.](#) of the Code contains no provisions which would allow an ex officio member of the Commission to be treated differently from a member appointed by the Governor. Therefore, we would advise that an ex officio member must be counted to determine whether a quorum is present.

*2 3. If a member of the Commission cannot attend a meeting, may he send a proxy vote to the meeting?

There is no provision within the Commission's enabling legislation which would permit a member to vote by proxy. If the intent of sending a proxy to a meeting would be to have a requisite number of votes for an action proposed to be taken at a meeting, such a proxy could not be used to assist in meeting the quorum requirement. As noted in the response to your first question, the quorum depends upon the number of persons present at the meeting. Thus, we would advise that a Commission member must vote in person and cannot send a proxy, absent statutory authorization.

4. May an ex officio member appoint another member from his legislative committee to attend meetings in his place?

[Section 59–7–10 of the Code](#) specifies that, among others, the Commission's membership shall include the chairman of the Senate Finance Committee, the chairman of the Senate Education Committee, the chairman of the Ways and Means Committee of the House, and the chairman of the Education Committee of the House. [Section 2–1–90 of the Code](#) further provides:

Whenever a statute provides for the chairman of a standing committee of the General Assembly to be a member of a board or commission, ex officio, the members of the standing committee may elect another member of the committee to serve in lieu of the chairman.

Where the terms of a statute are plain and unambiguous, they must be applied according to their literal meaning. [State v. Salmon](#), 279 S.C. 344, 306 S.E.2d 620 (1983). Thus, based on a literal reading of the statute, we would advise that Commission members who are ex officio by virtue of chairing a specified legislative committee could not appoint another committee member to attend in his place; however, the committee itself might elect another member to serve in the chairman's place.

We trust that this information satisfactorily responds to your inquiries. Please advise us if we may clarify any matter contained herein or provide additional assistance.

Sincerely,

Patricia D. Petway
Staff Attorney

Footnotes

¹ See [Section 59–7–10, Code of Laws of South Carolina \(1976\)](#).

² [Robert's](#) limits the actions which may be taken absent a quorum to (1) fixing the time to which to adjourn; (2) adjourning; (3) recessing; and (4) taking measures to obtain a quorum. [Id.](#), § 39 at page 295.

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